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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 555255-012441	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>August 21, 2007</u> Signature <u>Debra Pejeau</u> Typed or printed name <u>Debra Pejeau</u>		Application Number 10/643,029	Filed 08/18/2003
		First Named Inventor Christopher D. Smith	
		Art Unit 2163	Examiner Darno, Patrick A.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>47,919</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

Signature  
Joseph M. Sauer  
Typed or printed name  
(216) 586-7506  
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8/21/07  
Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 555255-012441

Group Art Unit: 3221 )  
Examiner: Patrick A. Darno )  
Inventor: Smith, et al. )  
Serial No.: 10/643,029 )  
Filed: August 18, 2003 )  
For: System and Method for )  
Triggering a Provisioning Event )

**REQUEST FOR PRE-APPEAL  
BRIEF PANEL REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Examiner has finally rejected claims 1-17 and 54 under 35 U.S.C. §103(a). The Applicant hereby requests review of the Final Rejection prior to filing an appeal brief for the reasons set forth below. The Final Rejection fails to make a *prima facie* case of unpatentability and there is clear error in the rejections of these claims. Any fees due should be charged to Jones Day Deposit Account No. 501432, ref: 555255-012441.

## **REASONS FOR PRE-APPEAL CONFERENCE REQUEST**

The rejections of at least independent claims 1 and 54 are clearly in error and must be withdrawn. Independent claims 1 and 54 describe the interaction between three separate entities – a provisioning system, a service provider, and an external system – for the purpose of causing the service provider to perform a provisioning event for an identified entity (mobile device) that receives a mobile communication service provided by the service provider. Specifically, a provisioning request message identifying the entity (mobile device) is sent from the external system to the provisioning system. The provisioning system then sends information in the provisioning request message to the service provider to trigger the provisioning event. The cited Yang and Lewis references clearly do not describe anything similar to this. Consequently, the office action's attempt to demonstrate correspondence between the cited references and the language of the claims contains numerous errors.

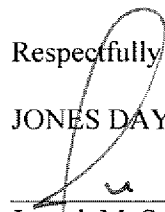
First, the cited references do not teach or suggest a provisioning system that receives a provisioning request message from an external system and transmits information in the provisioning request message to a service provider to trigger a provisioning event, as recited in claims 1 and 54. The office action at page 11 identifies the call center (130) in Fig. 1b of the Yang reference as corresponding to the claimed provisioning system, and identifies the FTP or HTTP Server (150) in Fig. 1b of the Yang reference as corresponding to the claimed service provider. However, the call center (130) in Yang does not transmit information in a provisioning request message to the FTP or HTTP Server (150). In fact, the Yang reference does not describe any communication at all between the call center (130) and the FTP or HTTP Server (150). Rather, the Yang reference explains that the call center (130) may communicate with a mobile device (110) to instruct the mobile device (110) to download a requested application program from a file storage location, such as the FTP or HTTP Server (150). This is not what is claimed, and for this reason alone, the rejection of claims 1 and 54 includes clear error and must be withdrawn.

Moreover, the FTP or HTTP Server (150) described in Yang is not a service provider, as recited in claims 1 and 54, because it does not provide mobile communication service to the entity (mobile device). The office action attempts to address this claim limitation at page 3 by proposing that because the Yang reference describes the ability of the mobile device to obtain services over a wireless communication network, that this “surely” involves “the service provider providing the entity with some form of mobile communication service.” It is clearly not, however, the FTP or HTTP Server (150) that provides this wireless communication service. The claims require that the service provider both receives information in the provisioning request message from the provisioning system and provides mobile communication service to the entity. The inability of the office action to point to anything in the Yang reference (or elsewhere) that performs these functions underscores that fact that the Yang reference does not describe anything similar to the claimed systems.

For at least these reasons, the Applicant submits that the rejection of claims 1 and 54 are clearly in error and must be withdrawn. Claims 2-17 each ultimately depend from claim 1 and are thus also patentable. The Panel is therefore respectfully requested to withdraw the rejections of claim 1-17 and 54 and to pass this case to issue.

Respectfully submitted,

JONES DAY



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